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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE ELEVENTH INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning nineteen claims included in the eleventh instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising directly out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. Each of the claimants had the opportunity to provide the Panel with information and documentation concerning the claims. The Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other Panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel has further amplified both procedural and substantive aspects of the process of formulating recommendations in its preamble to its consideration of the individual claims.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559).

4. The Panel is entrusted with three tasks in the present proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Second, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

B. The procedural history of the claims in the eleventh instalment

5. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "'E3' Claims") on the basis of established criteria. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category 'E' claims").

6. On 8 September 1999, the Panel issued a procedural order relating to the claims. The Panel decided to complete its review of the claims within 180 days of the date of its procedural order, in accordance with article 38(c) of the Rules.

7. In view of the review period and the available information and documentation the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. Nonetheless, due process, the provision of which is the responsibility of the Panel, has been achieved by the insistence of the Panel on the observance by claimants of the article 35(3) requirement for sufficient documentary and other appropriate evidence.

8. Prior to presenting the eleventh instalment to the Panel, the secretariat performed a preliminary assessment of each claim in order to determine whether the claim met the formal requirements established by the Governing Council in article 14 of the Rules. For those claims that did not meet the formal requirements, each claimant was notified of the deficiencies and invited to provide the necessary information pursuant to article 15 of the Rules (the "article 15 notification").

9. Further, a review of the legal and evidentiary basis of each claim identified specific questions as to the evidentiary support for the alleged loss. It also highlighted areas of the claim in which further information and documentation was required. Consequently, questions and requests for additional documentation were transmitted to the claimants pursuant to article 34 of the Rules (the "article 34 notification"). Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim was conducted.

10. That analysis brought to light the fact that many claimants lodged little material of a genuinely probative nature when they initially filed their claims. It also appears that many claimants did not retain relevant documentation and were unable to provide it when asked for it. Finally, many claimants did not respond to requests for further information and evidence. The consequence has inevitably been that for a large number of loss elements the Panel has been unable to recommend any compensation.

11. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel has assumed an investigative role that goes

beyond reliance merely on information and argument supplied with the claims as presented. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Next, reports on each of the claims were prepared focusing on the appropriate valuation of each of the compensable losses, and on the question of whether the evidence produced by the claimant was sufficient in accordance with article 35(3) of the Rules. The cumulative effect was one of the following: (a) a recommendation of full compensation for the alleged loss; (b) an adjustment to the amount of the alleged loss; or (c) a recommendation of no compensation.

12. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claimants

13. This report contains the Panel's findings with respect to the following claims of business entities organised under the laws of the Kingdom of Saudi Arabia for losses allegedly caused by Iraq's invasion and occupation of Kuwait:

(a) Abahsain Secem Limited for Electrical Works, which seeks compensation in the amount of USD 1,945,268;

(b) Abu Al-Enain & Jastaniah Co., Ltd., which seeks compensation in the amount of USD 3,679,049;

(c) Al-Ghurery Company for Trading and Contracting, which seeks compensation in the amount of USD 5,060,308;

(d) Al Harbi Trading and Contracting Co. Ltd., which seeks compensation in the amount of USD 1,722,883;

(e) Al-Hugayet Trading & Contracting Est., which seeks compensation in the amount of USD 1,198,880;

(f) Ali Awad Al-Qahtani & Bros. Co. (Claim 1), which seeks compensation in the amount of USD 218,034;

(g) Alissa Chemaco Co., Ltd., which seeks compensation in the amount of USD 1,564,187;

(h) Al Taif Company for Operation-Maintenance and Contracting Limited, which seeks compensation in the amount of USD 3,636,614;

(i) Arabian Lamah Co. Ltd., which seeks compensation in the amount of USD 5,120,981;

(j) Awrad United Trading Co. Ltd., which seeks compensation in the amount of USD 614,361;

(k) Chiyoda Petrostar Ltd., which seeks compensation in the amount of USD 20,734,289;

(l) Gustav Epple Arabia Limited, which seeks compensation in the amount of USD 3,989,842;

(m) Metito Arabia Industries Limited, which seeks compensation in the amount of USD 425,610;

(n) Mohammed A. Al-Swailem Co. Ltd. for Commerce & Cont., which seeks compensation in the amount of USD 1,880,725;

(o) Nesma & Al Fadl Contracting Co. Ltd., which seeks compensation in the total amount of USD 4,486;

(p) Saudi Amoudi Group Co., Ltd., which seeks compensation in the amount of USD 630,848;

(q) Saudi Arabian Saipem Limited, which seeks compensation in the amount of USD 3,941,807;

(r) Saudi Letco Co., Ltd., which seeks compensation in the amount of USD 654,205; and

(s) Trans Middle East Co. for Trading & Contracting, which seeks compensation in the amount of USD 465,878.

These amounts claimed in USD represent the alleged loss amounts after correction for applicable exchange rates as described in paragraphs 25 to 27, infra.

II. LEGAL FRAMEWORK

A. Applicable law

14. As set forth in paragraphs 17 and 18 of the Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of "E3" Claims (S/AC.26/1999/14) (the "Fourth Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. Pursuant to article 31 of the Rules, the Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

15. As set forth in paragraph 20 of the Fourth Report, the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq.

C. The "arising prior to" clause

16. In its Fourth Report, the Panel found that:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause "arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq's invasion and occupation of Kuwait; and

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse.

17. Thus, the Panel finds for the claims included in this report that a loss relating to a "debt or obligation [of Iraq] arising prior to 2 August 1990" means a debt and/or obligation that is based on work performed or services rendered prior to 2 May 1990 and that such loss is outside the jurisdiction of the Commission. See Fourth Report, paragraphs 21 - 23

D. Application of the "direct loss" requirement

18. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is recoverable for:

> "... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention."

19. Each of the claimants in this report allege losses with respect to activities within the Kingdom of Saudi Arabia. The claimants allege that such losses are recoverable because the losses were suffered as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991."

20. In its Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E2' Claims (S/AC.26/1998/7) (the "First E2 Report"), the "E2" Panel found:

> "The military operations that resulted in damage in Saudi Arabia were sporadic events that did not bring about the kind of systematic and thorough damage and injury inflicted by the military operations that took place all over Kuwait during the relevant period."
>
> ...
>
> "As regards the territory of Saudi Arabia, the evidence is clear that it was credibly threatened with military action by Iraq during the period 2 August 1990 to 2 March 1991. Not only did Iraq's President clearly articulate verbal threats against the territory of Saudi Arabia, but Iraqi forces were massed along the Saudi border and scud missiles were aimed at Saudi Arabia. These threats therefore meet the requirements of paragraph 21(a) of Governing Council decision 7

since they were sufficiently credible and serious, and intimately connected to the relevant military operations. Indeed, actual military clashes between Iraqi ground forces and allied coalition forces, including Saudi Arabian troops, took place on Saudi Arabian soil, and actual scud missile attacks were inflicted on Saudi Arabia."

"First E2" Report, paragraphs 157 and 162.

21. Adopting the findings of the "E2" Panel, this Panel finds that damage or loss suffered as a result of (a) military action in Saudi Arabia by either the Iraqi or the Allied Coalition Forces or (b) a credible and serious threat that was connected to Iraq's invasion and occupation of Kuwait is compensable in principle. Of course, the further the project in question was from the area where military operations were taking place, the more the claimant may have to do to establish causality. On the other hand, the potential that an event such as the invasion and occupation of Kuwait has for causing an extensive ripple effect cannot be ignored. At the end of the day, each case must depend on its facts.

22. As stated in the "First E2" Report,

"[t]he Panel therefore concludes that a claimant seeking compensation for loss or damage arising out of the threat of military action must make a specific showing of how the loss or damage alleged was the direct result of a credible and serious threat that was intimately connected to Iraq's invasion and occupation of Kuwait. If such a showing is made, the claimant will have established the requisite causal link between the loss or damage alleged and Iraq's invasion and occupation of Kuwait."

"First E2" Report, paragraph 163.

23. This finding regarding the meaning of "direct loss" is not intended to resolve every issue that may arise with respect to the Panel's interpretation of Governing Council decisions 7. Rather, this sets an initial parameter for the review and evaluation of the claims in the present report.

E. Date of loss

24. There is no general principle with respect to the date of loss. It needs to be addressed on an individual basis. In addition, the specific loss elements of each claim may give rise to different dates if analysed strictly. However, applying a different date to each loss element within a particular claim is impracticable as a matter of administration. Accordingly, the Panel has decided to determine a single date of loss for each claimant which in most cases coincides with the date of the collapse of the particular project. For purposes of the claims included in this

report, the Panel has concluded that the appropriate date of loss is the middle of January. Unless otherwise noted the Panel finds this to be 15 January 1991.

F. Currency exchange rate

25. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

26. The Panel finds that, as a general rule, the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically agreed by the parties.

27. For losses that are not contract based, however, the contract rate is not usually an appropriate rate of exchange. For non-contractual losses, the Panel finds the arpropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics, at the date of loss.

G. Interest

28. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing any decision on the methods of calculation and payment.

29. The Panel recommends that interest shall run from the date of loss.

H. Claims preparation costs

30. Some claimants sought to recover compensation for the cost of preparing their claims. The compensability of claim preparation costs has not hitherto been ruled on and will be the subject, in due course, of a specific decision by the Governing Council. Accordingly, the Panel makes no recommendation with respect to costs of claim preparation in any of the claims where it is raised.

III. RECURRENT ISSUES

A. Evidence of loss

31. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has stated in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to justify a recommendation for compensation. (S/AC.26/1992/15)

32. The Panel takes this opportunity to emphasise that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission of evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. That standard is also affected by the fact that, in the case of the claims which are the subject of this report, Iraq's input is limited to the participation defined by article 16 of the Rules. In implementing this approach, the Panel applied the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules.

1. Sufficiency of evidence

33. At the end of the day, claims that are not supported by sufficient and appropriate evidence fail. And in the context of the construction claims that are before this Panel, the most important evidence is documentary. It is in this context that the Panel records that a syndrome which it found striking when it addressed the claims included in the Fourth Report has continued to manifest itself in the claims included in this report. This was the reluctance of claimants to make critical documentation available to the Panel.

34. Imperatively, the express wording of decision 46 of the Governing Council requires that "... claims received in categories 'D', 'E', and 'F' must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss...". In this same decision, the Governing Council decided that "...no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant...". (S/AC.26/1998/46)

35. The Panel notes that some of the claimants in this instalment sought to explain the lack of documentation by asserting that all the documentation was in areas of civil disorder and was destroyed, or, at least, cannot be accessed. Every single one of the claimants is or was based outside Iraq.

36. What is more, the absence of any relevant contemporary record to support a particular claim means that the claimant is inviting the Panel to make an award, often of millions of dollars, on no foundation other than the assertion of the claimant. This would not satisfy the "sufficient evidence" rule in article 35(3) of the Rules. It is something that the Panel is unable to do.

2. Sufficiency under article 35(3): The obligation of disclosure

37. Next in the context of the documentary evidence, this Panel wishes to highlight that claims must be supported by sufficient documentary and other appropriate evidence. This involves bringing to the attention of the Commission all material aspects of the claim, whether such aspects are seen by the claimant as beneficial to or reductive of its claims. The obligation is not dissimilar to good faith requirements under domestic jurisdictions.

3. Missing documents: The nature and adequacy of the paper trail

38. The Panel now turns to the question of what a claimant must do.

39. Where documents cannot be supplied, their absence must be explained in a credible manner. The explanation must itself be supported by the appropriate evidence. Claimants may also supply substitute documentation for or information about the missing documents. Claimants must remember that the mere fact that they suffered a loss at the same time as the hostilities in the Persian Gulf were starting or were in process does not mean that the loss was directly caused by Iraq's invasion and occupation of Kuwait. A causative link must be established. It should also be borne in mind that it was not the intention of the Security Council in its resolutions to provide a "new for old" basis of reimbursement of the losses suffered in respect of tangible property. Capital goods depreciate. That depreciation must be taken into account and demonstrated in the evidence filed with the Commission. In sum, in order for evidence to be considered appropriate and sufficient to demonstrate a loss, the Panel expects claimants to present to the Commission a coherent, logical and sufficiently evidenced file leading to the financial claims that they are making.

40. Of course, the Panel recognises that in time of civil disturbances, the quality of proof may fall below that which would be submitted in a peace time situation. Persons who are fleeing for their lives do not stop to collect the audit records. Allowances have to be made for such vicissitudes.

41. The Panel has approached the claims in the light of the general and specific requirements to produce documents noted above. Where there has been a lack of documentation, combined with no or no adequate explanation for that lack, and an absence of alternative evidence to make good any part

of that lack, the Panel has had no opportunity or basis upon which to make a recommendation.

B. Amending claims after filing

42. In the course of processing the claims after they have been filed with the Commission, further information is sought from the claimants pursuant to the Rules. When the claimants respond they sometimes seek to use the opportunity to amend their claims. They add new loss elements. They increase the amount originally sought in respect of a particular loss element. They transfer monies between or otherwise adjust the calculation of two or more loss elements. They do all of these.

43. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council approved a mechanism for these claimants to file unsolicited supplements until 11 May 1998. After that date a response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a loss element or elements or to seek to recover in respect of new loss elements. In these circumstances, the Panel is unable to take into account such increases nor such new loss elements when it is formulating its recommendation to the Governing Council. It does, however, take into account additional documentation where that is relevant to the original claim, either in principle or in detail. It also exercises its inherent powers to re-characterise a loss which is properly submitted as to time, but is inappropriately allocated.

44. Some claimants also file unsolicited submissions. These too sometimes seek to increase the original claim in the ways indicated in the previous paragraph. Such submissions when received after 11 May 1998 fall to be treated in the same way as amendments put forward in solicited supplements. Accordingly the Panel is unable to, and does not, take into account such amendments when it is formulating its recommendation to the Governing Council.

C. Contract losses

1. Claims for contract losses with a non-Iraqi party

45. Some of the claims relate to losses suffered as a result of non-payment by a non-Iraqi party. The fact of such a loss, simpliciter, does not establish it as a direct loss within the meaning of Security Council resolution 687 (1991). In order to obtain compensation, a claimant should lodge sufficient evidence that the entity carrying on business on 2 August 1990 was unable to make payment as a direct result of Iraq's invasion and occupation of Kuwait.

46. A good example of this would be that the party was insolvent and that insolvency was a direct result of the illegal invasion and occupation of

Kuwait. At the very least a claimant should demonstrate that the other party had not renewed operations after the occupation. In the event that there are multiple factors which have resulted in the failure to resume operations, apart from the proved insolvency of the other party, the Panel will have to be satisfied that the effective reason or causa causans was Iraq's invasion and occupation of Kuwait.

47. Any failure to pay because the other party was excused from performance by the operation of law which came into force after Iraq's invasion and occupation of Kuwait is in the opinion of this Panel the result of a novus actus interveniens and it is not a direct loss arising out of Iraq's invasion and occupation of Kuwait.

2. Losses arising as a result of unpaid retentions

48. The claims before this Panel include requests for compensation for unpaid retention.

49. Where the payment is directly related to the work done, it is almost invariably the case that the amount of the actual (net) payment is less than the contractual value of the work done. This is because the employer retains in his own hands a percentage (usually 5 per cent or 10 per cent and with or without an upper limit) of that contractual value. (The same approach usually obtains as between the contractor and his sub-contractors.) The retained amount is often called the "retention" or the "retention fund". It builds up over time. The less work the contractor had carried out before the project comes to an early halt, the smaller the fund.

50. The retention is usually payable in two stages, one at the commencement of the maintenance period, as it is often called, and the other at the end. The maintenance period usually begins when the employer first takes over the project, and commences to operate or use it. Thus the work to which any particular sum which is part of the retention fund relates may have been executed a very long time before the retention fund is payable.

51. In the light of the above considerations it seems to this Panel that the situation in the case of claims for retention is as follows:

(a) The evidence before the Commission may show that the project was in such trouble that it would never have reached a satisfactory conclusion. In such circumstances, there can be no positive recommendation, principally because there is no direct causative link between the loss and Iraq's invasion and occupation of Kuwait.

(b) Equally it may be the case that the evidence may show that the project would have reached a conclusion, but that there would have been problems to resolve. Accordingly the contractor would have had to expend

money resolving those problems. That potential cost would have to be deducted from the claim for retention; and accordingly the most convenient course would be to recommend an award to the contractor of a suitable percentage.

(c) Finally, on the evidence it may be the case that there is no reason to believe or conclude that the project would have gone other than satisfactorily. In those circumstances, it seems that the retention claim should succeed.

D. Claims for "lost profits"

52. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits". (S/AC.26/1992/9)

53. The expression "lost profits" is an encapsulation of quite a complicated concept. In particular, it will be appreciated that achieving profits or suffering a loss is a function of the risk margin and the actual event. See Fourth Report, paragraphs 133 - 138.

54. The qualification of "margin" by "risk" is an important one in the context of construction contracts. These contracts run for a considerable period of time; they often take place in remote areas or in countries where the environment is hostile in one way or another; and of course they are subject to political problems in a variety of places - where the work is done; where materials, equipment or labour have to be procured; and along supply routes. The surrounding circumstances are thus very different and generally more risk prone than is the case in the context of, say, a contract for the sale of goods.

55. In the view of the Panel it is important to have these considerations in mind when reviewing a claim for lost profits on a major construction project. In effect one must review the particular project for what might be called its "loss possibility". The contractor will have assumed risks. It will have provided a margin to cover these risks. It will have to demonstrate a substantial likelihood that the risks would not occur or would be overcome within the risk element so as to leave a margin for actual profit.

56. This approach, in the view of the Panel, is inherent in the thinking behind paragraph 5 of Governing Council decision 15. This paragraph expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.

57. In the light of the above analysis, and in conformity with the two decisions cited above, this Panel requires the following from those construction claimants that seek to recover for lost profits. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. It is not sufficient to prove that there would have been a "profit" at some stage before the completion of the project. Such a proof would only amount to a demonstration of a temporary credit balance. This can even be achieved in the early stages of a contract, for example where the pricing has been "front-loaded" for the express purpose of financing the project. Instead, the claimant must lodge sufficient and appropriate evidence to show that the contract would have been profitable as a whole.

E. Tangible property

58. With reference to losses of tangible property, decision 9 provides that where direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation (paragraph 12). Typical actions of this kind would have been the expropriation, removal, theft or destruction of particular items of property by Iraqi authorities. Whether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation. It furthermore provides that in a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from Iraq's invasion and occupation (paragraph 13).

59. Subject to the limitations set forth in paragraph 21 of this report, the Panel finds that this analysis applies with equal force to tangible property losses suffered in the Kingdom of Saudi Arabia.

F. Payment or relief to others

60. Paragraph 21(b) of decision 7 specifically provides that losses suffered as a result of "the departure of persons from or their inability to leave Iraq or Kuwait" are to be considered the direct result of Iraq's invasion and occupation of Kuwait. Consistent with decision 7, therefore, the Panel finds that evacuation and relief costs incurred in assisting employees in departing from the Kingdom of Saudi Arabia are compensable to the extent such departures were the direct result of military operations or threat of military operations, by either side during the period 2 August 1990 to 2 March 1991.

61. Paragraph 22 of Governing Council decision 7 provides that "payments are available to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

62. In the Fourth Report, this Panel found that the costs associated with evacuating and repatriating employees between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation, are in principle, compensable.

63. Many claimants did not provide a documentary trail detailing to perfection the expenses incurred in caring for their personnel and transporting them out of a theatre of hostilities.

64. In these cases the Panel considered it appropriate to accept a level of documentation consistent with the practical realities of a difficult, uncertain and often hurried situation, taking into account the concerns necessarily involved. The loss sustained by claimants in these situations is the very essence of the direct loss suffered which is stipulated by Security Council resolution 687 (1991). Accordingly, the Panel used its best judgement, after considering all relevant reports and the material at its disposal, to arrive at an appropriate figure.

IV. NON-RESPONDING CLAIMANTS

65. Claims submitted to the Commission must meet certain formal requirements established by the Governing Council.

66. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. These claimants must submit:

(a) an "E" claim form with four copies in English or with an English translation;

(b) the name and address of the claimant and evidence of the amount, type and causes of losses;

(c) an affirmation by the Government that, to the best of its knowledge, the claimant is incorporated in or organized under the law of the Government submitting the claim;

(d) documents evidencing the name, address and place of incorporation or organization of the claimant;

(e) evidence that the claimant was, on the date on which the claim arose, incorporated or organized under the law of the Government which has submitted the claim;

(f) a general description of the legal structure of the claimant; and

(g) an affirmation by the authorized official for the claimant that the information contained in the claim is correct.

67. Additionally, the "E" claim form requires that a claimant submit with its claim a separate statement in English explaining its claim ("Statement of Claim"), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed losses. The following particulars are requested in the "INSTRUCTIONS FOR CLAIMANTS":

(a) the date, type and basis of the Commission's jurisdiction for each element of loss;

(b) the facts supporting the claim;

(c) the legal basis for each element of the claim; and

(d) the amount of compensation sought and an explanation of how the amount was calculated.

68. If it is determined that a claim does not meet these formal specifications or does not include a Statement of Claim, the claimant is sent an article 15 notification requesting the claimant to remedy such deficiencies.

69. Each of the claimants included in this report was sent an article 15 notification on 1 October 1998 requiring a response on or before 1 April 1999. If a claimant failed to respond to that notification, the claimant was sent a formal article 15 notification on 3 May 1999 and required to reply on or before 2 July 1999.

70. Additionally, each of the claimants included in this report was sent an article 34 notification dated 10 March 1999 requesting additional information and documentation in support of its claim on or before 14 July 1999. If a claimant failed to respond to the article 34 notification, a reminder notification dated 20 July 1999 was sent to the claimant requesting it to provide the information and documentation on or before 3 August 1999.

71. The claimants identified in the table below failed to comply with the formal requirements established by the Governing Council. Out of the nine identified claimants, eight of them did not respond to any of the notifications sent by the secretariat. The ninth responded to the article

15 notifications, but failed to respond to the article 34 notifications. All of these claimants failed to rectify certain formal deficiencies or to provide sufficient information and documentation that would allow the Panel to review the claims.

Table 1. Non-responding claimants

Claimant	Claim Amount USD	Recommended Amount USD	Deficiencies
Abahsain Secem Limited	1,945,268	nil	copies; proof of incorporation; signing authority; statement of claim
Ali Awad Al Qahtani	218,034	nil	copies; translations; proof of incorporation; signing authority; statement of claim
Alissa Chemaco	1,564,187	nil	copies; translations; proof of incorporation; signing authority; statement of claim
Al Taif Co.	3,636,614	nil	translations; signing authority
Awrad United Trading	614,361	nil	copies; translations; proof of incorporation; signing authority; statement of claim
Metito Arabia	425,610	nil	copies; proof of incorporation; signing authority; statement of claim
Saudi Amoudi Group	630,848	nil	copies; statement of claim
Saudi Letco. Co. Ltd.	654,205	nil	copies; proof of incorporation
Trans Middle East	465,878	nil	copies; translations; proof of incorporation; signing authority; statement of claim

72. Notwithstanding the requirements of article 15 of the Rules, the Panel considered such information and documentation as had been submitted and found it to be insufficient to support any of the claims. Therefore, the Panel finds that each of these claimants both failed to fulfil certain formal requirements and to submit sufficient information and documentation to support the asserted losses.

73. Based on these findings, the Panel recommends no compensation for each of these claimants.

V. THE CLAIM OF ABU AL-ENAIN & JASTANIAH CO., LTD.

74. Abu Al-Enain & Jastaniah Co., Ltd. ("Abu Al-Enain") is a Saudi Arabian limited liability company specialising in construction. Abu Al-Enain provided an English translation of the "Company Registration Certificate" issued by the Ministry of Commerce in which Abu Al-Enain's name is stated as "Abu Alenain & Jastaniah Company for Contracting & Trading".

75. Abu Al-Enain seeks compensation in the amount of SAR 13,778,039 (USD 3,679,049) for contract losses, loss of profits, payment or relief to others, financial losses and claim preparation costs.

76. The claim preparation cost element is in the amount of SAR 250,000 (USD 66,756). Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

A. Contract losses

1. Facts and contentions

77. Abu Al-Enain seeks compensation in the amount of SAR 4,383,361 (USD 1,170,457) for expenses incurred on bank commissions and delay penalties.

78. Abu Al-Enain entered into an agreement dated 5 October 1985 with the Water and the Sewerage Directorate, Eastern Province, for the implementation of the Jubail water distribution network at Jubail. The project works were to be completed in 30 months according to the Hijra calender.

79. Abu Al-Enain seeks SAR 883,361 for expenses incurred on bank commissions. Abu Al-Enain stated that work stopped at the project site and, as a result, it did not receive payment from the employer. Abu Al-Enain stated that because it did not receive payment, it was unable to repay bank loans and as a result, it paid increased commissions to the banks between August 1990 and April 1991.

80. Additionally, Abu Al-Enain seeks SAR 3,500,000 for delay penalties imposed by the employer due to delay in the completion of the project works.

2. Analysis and valuation

81. The Panel finds that Abu Al-Enain did not provide sufficient evidence to prove payment of the bank commissions. Abu Al-Enain provided a computer generated document entitled "Summary of Saudi French Bank Charges" for the period from August 1990 to April 1991. This document does not establish the payment of the alleged amount by Abu Al-Enain. Abu Al-Enain did not

provide any other evidence that would establish payment of the alleged amount and neither did it provide any documentary evidence with respect to the loans it took from the banks. Finally, Abu Al-Enain did not provide any evidence that would establish that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation for bank commissions.

82. In support of its claim for delay penalties, Abu Al-Enain provided an English translation of the copy of the agreement. Article 7 of the agreement refers to "Tardiness Fine". This article provides for the imposition of fines if project works are not completed on time. The Panel finds that Abu Al-Enain did not provide any evidence demonstrating payment or calculation of the alleged delay penalties. The Panel recommends no compensation for delay penalties.

3. Recommendation for contract losses

83. The Panel recommends no compensation for contract losses.

B. Loss of profits

84. Abu Al-Enain seeks compensation in the amount of SAR 2,500,000 (USD 667,557) for loss of profits. Abu Al-Enain stated that "the company was inflicted by loss of expected profits from August 90 to April 91 estimated at SAR 2,500,000". Abu Al-Enain did not provide any other information with respect to its claim for loss of profits.

85. The Panel finds that Abu-Al Enain did not submit sufficient evidence to support the alleged loss. Applying the approach taken with respect to loss of profits set out in paragraphs 52 to 57, the Panel recommends no compensation for loss of profits.

C. Payment or relief to others

86. Abu Al-Enain seeks compensation in the amount of (a) SAR 824,392 (USD 220,131) for monthly salaries and (b) SAR 136,544 (USD 36,460) for subsistence of employees.

87. Abu Al-Enain stated that it continued to pay salaries to its employees during the period August 1990 to April 1991 when no work was performed. It alleges that this loss is a direct result of Iraq's invasion and occupation of Kuwait because, had it not been for the invasion and occupation, it "would have acquired returns for these payments in the form of real work".

88. The Panel finds that Abu Al-Enain did not provide sufficient evidence to prove payment of monthly salaries. Abu Al-Enain provided copies of "contract of employment" and documents titled "breakdown of indirect manpower costs" for the months of August to December 1990 and January to

April 1991. The documents provided by Abu Al-Enain do not identify the period when work stopped on the project site and nor do they enable the Panel to understand how the claimed amount was calculated. The Panel recommends no compensation for monthly salaries.

89. From the information provided by Abu Al-Enain, the Panel is unable to determine the nature of the expenses incurred for subsistence of its employees.

90. As Abu Al-Enain did not provide sufficient evidence in support of losses for subsistence of employees, the Panel recommends no compensation for payment or relief to others.

D. Financial losses

1. Facts and contentions

91. Abu Al-Enain seeks compensation in the amount of SAR 5,683,742 (USD 1,517,688) as follows: (a) SAR 58,289 for electricity/water and telephone; (b) SAR 126,204 for benzine and diesel; (c) SAR 65,550 for rentals; (d) SAR 3,586,752 for "cost of idle time of equipment"; (e) SAR 700,000 for cost of materials; and (f) SAR 1,146,947 for remuneration of consultants.

2. Analysis and valuation

(a) Electricity/water and telephone

92. Abu Al-Enain did not provide sufficient evidence in support of this claim. The Panel recommends no compensation for electricity/water and telephone.

(b) Benzine and diesel

93. Abu Al-Enain did not provide sufficient evidence in support of this claim. The Panel recommends no compensation for benzine and diesel.

(c) Rentals

94. The Panel finds that Abu Al-Enain did not provide sufficient evidence to substantiate its claim for expenses incurred on rentals. Abu Al-Enain provided copies of lease agreements. The duration of the lease agreements and the dates on which they were executed are not stated on these agreements. Nor do the agreements mention the rental amount. The Panel also finds that the evidence provided does not establish that Abu Al-Enain paid the alleged amount. The Panel recommends no compensation for rentals.

(d) "Cost of idle time of equipment"

95. In support of its claim, Abu Al-Enain provided a copy of an undated letter (on plain paper) from the project manager to Mr. Ahmed Haboub at the Jeddah Head Office. This letter describes the equipment and vehicles that would be required, and those that would not be required, to complete the project works. This letter does not establish the presence of the described equipment and vehicles at the project site. Abu Al-Enain did not explain the basis of the calculation of the claimed amount and how it was calculated.

96. The Panel finds that Abu Al-Enain did not provide sufficient evidence to substantiate its claim for "cost of idle time of equipment". The Panel recommends no compensation for "cost of idle time of equipment".

(e) Cost of materials

97. Abu Al-Enain did not provide sufficient evidence in support of this claim. The Panel recommends no compensation for increase in cost of materials.

(f) Remuneration of consultants

98. Abu Al-Enain did not provide sufficient evidence in support of this claim. The Panel recommends no compensation for "remuneration of consultants".

3. Recommendation for financial losses

99. The Panel recommends no compensation for financial losses.

E. Summary of recommendation for Abu Al-Enain

100. Based on the foregoing findings, the Panel recommends no compensation.

VI. THE CLAIM OF AL-GHURERY COMPANY FOR TRADING AND CONTRACTING

101. Al-Ghurery Company for Trading and Contracting ("Al-Ghurery"), is a Saudi Arabian limited liability company. It seeks compensation for losses allegedly suffered during the execution of contract works for the Ministry of Defense and Aviation (the "Ministry") at King Fahd International Airport (the "Airport") ("Project A"); and contract works for the Saudi Fund for Development, for the construction of 192 housing units and a kindergarten at Malla, Aden, Yemen ("Project B").

102. On the claim form dated 6 January 1994, Al-Ghurery sought compensation in the total amount of SAR 18,918,852. In its substituted claim submitted by the claimant's legal representative, Al-Ghurery added SAR 32,000 for claim preparation costs and the total claimed amount was stated as SAR 18,950,852 (USD 5,060,308).

103. Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

A. Contract losses on Project A

1. Facts and contentions

104. In its response to the article 34 notification, Al-Ghurery stated that for Project A it suffered "losses in the amount of SAR 4,607,003" (USD 1,230,174). Al-Ghurery seeks compensation in the amount of (a) SAR 898,929 for the refurbishing of buildings; (b) SAR 661,828 for miscellaneous losses; (c) SAR 1,189,054 for loss of output; (d) SAR 831,990 for loss due to reduced progress; and (e) SAR 1,025,202 for increase in the cost of materials.

105. The Panel also notes that the Ministry (in its capacity as a claimant) has filed a category "F" claim with the Commission, bearing UNCC claim No. 5000220. The claim of Al-Ghurery is included in this "F" claim for an amount of SAR 4,607,003. The Panel notes that Al-Ghurery did not disclose this information. It appears to the Panel that the portion of the Al-Ghurery claim included in the "F" claim filed by the Ministry is an exact duplicate. As Al-Ghurery has elected to submit its own claim, the Panel will decide this claim.

(a) Refurbishing of buildings

106. Al-Ghurery stated that "Refurbication of the building includes the repairs made to the damages incurred by the Allied Forces during their occupation of the buildings under construction and repairs/painting to the walls and equipment due to extended exposure to the sand and the sun".

(b) Miscellaneous losses

107. Al-Ghurery seeks compensation for losses incurred under the heading of miscellaneous losses as follows:

Table 2. Miscellaneous losses alleged by Al-Ghurery

1.	Shifting of materials	SAR 18,113
2.	Demobilisation of labour	SAR 77,000
3.	Remobilisation of labour	SAR 87,400
4.	Bank charges	SAR 15,000
5.	Additional watchmen	SAR 87,990
6.	Depreciation of vehicles and materials	SAR 125,000
7.	Increase in fuel and maintenance cost	SAR 15,000
8.	Storage charges for materials	SAR 100,000
9.	Refurbishing of labour camp	SAR 50,000
10.	Markup at 15 per cent	SAR 86,325
	TOTAL:	SAR 661,828

(c) Loss of output

108. Al-Ghurery seeks compensation for a decline in the productivity of its workers. It attributes this decline to a number of causes. These causes were: mental pressure, where it is said that some of its workforce lost three man hours per day; increased security, where it is said that some of its workforce lost two man hours per day; occupation of the Airport by the Allied Coalition Forces, where it is said that some of its workforce lost three man hours per day; and removal of its workforce from the project site. The stated losses are as follows:

Table 3. Loss of output alleged by Al-Ghurery

1.	Mental pressure	SAR 234,000
2.	Increased security	SAR 83,960
3.	Occupation by Allied Coalition Forces	SAR 125,280
4.	Demobilising until remobilisation	SAR 590,720
5.	Markup at 15 per cent	SAR 155,094
	TOTAL:	SAR 1,189,054

(d) Loss due to reduced progress

109. Al-Ghurery stated that Iraq's invasion and occupation of Kuwait and the consequent occupation of the Airport by the Allied Coalition Forces led to the decline of productivity and increased overheads. Al-Ghurery calculated overheads from August 1990 to November 1991 as SAR 763,552. It stated that during this period it recovered overheads in the amount of SAR 65,184. It further stated that during the months of August 1990 to March 1991 overheads increased to 35 per cent. For this eight month period, it has calculated the increase in overheads for a total loss of SAR 831,990.

(e) Increase in the cost of materials

110. Al-Ghurery stated that "since it is not possible to produce cost comparison between old and new prices for all the materials, we have selected the major materials and compared their costs. Based on the compared costs of these materials a general percentage increase has been established. This percentage has been applied to the total cost of materials purchased until now and required to be purchased until completion".

2. Analysis and valuation

(a) Refurbishing of buildings

111. Al-Ghurery provided a self generated detailed schedule of labour and materials allegedly used. It also provided a copy of a letter dated 27 April 1991 addressed to the employer's project manager, stating that the damage to the buildings amounted to SAR 535,197. The Panel notes that Al-Ghurery did not explain the increase in the damage set forth in its claim nor did it provide any response from the project manager with respect to the compensability of its claim. From the evidence provided, the Panel is unable to ascertain if Al-Ghurery recovered its losses under the contract from the employer.

112. The Panel finds that Al-Ghurery did not provide sufficient evidence to substantiate its claim for the refurbishing of buildings and recommends no compensation.

(b) Miscellaneous losses

113. The Panel finds that Al-Ghurery did not provide sufficient evidence to substantiate its claim for miscellaneous losses. The Panel notes that the evidence provided by Al-Ghurery is in the form of its own calculations and assertions. It did not provide independent evidence (i.e., bills, receipts, invoices, documents establishing ownership) of the alleged expenditures. The Panel finds that the evidence provided by Al-Ghurery does not establish that it incurred the alleged expenditures or suffered the alleged losses. The Panel recommends no compensation.

(c) Loss of output

114. Al-Ghurery provided a self generated list of its employees containing 208 names and their salaries, together with illegible payroll records. This list covered only part of the period for which the loss is claimed. Al-Ghurery did not provide documentation or other information to substantiate its claims relating to lost man hours. The Panel also notes that there is a possibility of duplication of daily assessment periods. With respect to demobilising the employees, the Panel finds that the evidence provided does not establish that the employees were evacuated or were non-productive. The Panel finds that Al-Ghurery did not provide sufficient evidence to substantiate its claim for loss of output. The Panel recommends no compensation.

(d) Loss due to reduced progress

115. The Panel finds that Al-Ghurery did not provide sufficient evidence to substantiate its loss due to reduced progress. It provided an internally generated document that breaks down the losses. In its response to the article 34 notification, it also provided interim payment certificates up to December 1990. The interim payment certificates provided do not cover the full period for which the loss is claimed. Al-Ghurery did not provide evidence to establish the basis on which it calculated its overheads or the increase in overheads to 35 per cent. Al-Ghurery did not provide progress statements, work programmes or cash flow forecasts to allow the Panel to compare the budgeted work with actual progress. The Panel also notes that the project works were to be completed by 11 July 1991, but were eventually completed on 3 February 1994. It may be, indeed almost certainly was, the case that this extension of the contract period from the middle of 1991 to early 1994 led to an increase in the overheads. However, Al-Ghurery did not provide sufficient evidence for the Panel to determine either the question of causality or the question of amount. The Panel recommends no compensation.

(e) Increase in cost of materials

116. The Panel finds that Al-Ghurery did not provide sufficient evidence to substantiate its loss due to increase in the cost of materials. It provided an internally generated document wherein it selected some "major materials" along with the name of suppliers and a comparison of old prices to the increased prices.

117. The Panel notes that the old and new quotations were not issued by the same supplier and neither are they for similar kinds of goods nor specifications. Some of the original quotations are in incomplete copies, and the original delivery or performance dates are not specified. The Panel also notes from the documents that intermediate revised quotations were issued in certain instances. These interim quotations seem to

identify increases proposed prior to Iraq's invasion and occupation of Kuwait, but sufficient evidence of these increases has not been provided.

118. The Panel finds that the evidence provided is not sufficient to support the claim. Further, the calculations of Al-Ghurery are not supported by the information and documents provided. The Panel recommends no compensation.

3. Recommendation for Project A contract losses

119. The Panel recommends no compensation for Project A contract losses.

B. Project B contract losses

120. Although not clearly identified by Al-Ghurery, it appears that Al-Ghurery was originally seeking compensation in the amount of SAR 14,343,849 (USD 3,830,133) for contract losses suffered on Project B. In its response to the article 34 notification, Al-Ghurery did not answer any questions, nor did it provide any evidence relating to Project B. The Panel finds that Al-Ghurery did not submit sufficient evidence to support the losses related to Project B. The Panel recommends no compensation.

C. Summary of recommendations for Al-Ghurery

121. Based on the foregoing findings, the Panel recommends no compensation. Because the Panel recommends no compensation, the claim for interest is also rejected.

VII. THE CLAIM OF AL HARBI TRADING AND CONTRACTING CO. LTD.

122. Al Harbi Trading and Contracting Company Ltd., ("Al Harbi") is a limited liability company incorporated in Riyadh, Saudi Arabia. Al Harbi seeks compensation in the total amount of SAR 6,452,198 (USD 1,722,883) for losses incurred due to project delays in respect of two contracts entered into with the Riyadh Municipality, claim preparation costs and interest on losses suffered.

123. In its response to the article 34 notification, Al Harbi increased the amount of its claim to SAR 17,996,646 adding losses for two additional contracts. For the reasons set out in paragraphs 42 to 44 (amending claims after filing), the Panel does not consider Al Harbi's claim for the increased amounts.

124. The claim preparation costs element is in the amount of SAR 22,010 (USD 5,877). Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

Table 4: Losses alleged by Al Harbi

Loss	Al Feryan Road Contract	Aysha Bakr Road Contract	Total by Loss
1) Penalty and supervision	SAR 431,378	SAR 1,342,856	SAR 1,774,234
2) Manpower	SAR 1,444,397	SAR 1,452,311	SAR 2,896,708
3) Administrative and general expenses	SAR 424,413	SAR 208,097	SAR 632,510
4) Spare parts, maintenance, operation expenses and depreciation	SAR 268,962	SAR 857,774	SAR 1,126,736
Total by Contract	SAR 2,569,150	SAR 3,861,038	SAR 6,430,188 (USD 1,717,006)

125. Al Harbi stated that due to the circumstances that occurred during the execution periods of the contracts, including desertion of the workers and the tense state of war, the project was delayed and the contracts were extended.

126. Al Harbi provided little explanation of its claimed losses and relied solely on the differences between the stated dates of initial handover and the dates of final completion to establish the delay periods of the

projects. No further explanation or documentation is provided to demonstrate that such losses were incurred or their cause.

127. The Panel finds that Al Harbi did not provide sufficient evidence of its stated losses. In addition, the Panel finds that Al Harbi failed to establish the causal connection between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation for contract losses.

128. Al Harbi also seeks compensation for interest on the losses suffered. Because the Panel recommends no compensation for the contract losses, the claim for interest is rejected.

129. Based on the foregoing findings, the Panel recommends no compensation.

VIII. THE CLAIM OF AL-HUGAYET TRADING & CONTRACTING EST.

130. Al-Hugayet Trading & Contracting Est. ("Al-Hugayet") is a sole proprietorship owned by Mr. Abdul Hadi H. Al-Zoebi established in Dammam, Saudi Arabia. Al-Hugayet is engaged in the import, sales and maintenance of equipment under agency contracts as well as carrying out general service contracts.

131. Al-Hugayet was involved in several operation and maintenance contracts in the Eastern Province of Saudi Arabia, but its main source of income was from a contract with Arabian Oil Company ("AOC") in Al-Khafji. The contract was for the supply of manpower, technical and engineering services for AOC production facilities. Al-Hugayet charged its fees on an hourly rate basis. The contract was to begin on 1 November 1990 and run for a period of five years.

132. Additionally, Al-Hugayet alleges that it acts as an agent for a number of international manufacturers and that its sales for the period August 1990 to December 1991 decreased due to Iraq's invasion and occupation of Kuwait.

133. Al-Hugayet seeks compensation in the total amount of SAR 4,489,807 (USD 1,198,880) for loss of profits, payment or relief to others, financial losses and claim preparation costs.

134. The claim preparation costs element is in the amount of SAR 27,500 (USD 7,343). Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

A. Loss of profits

1. Facts and contentions

135. Al-Hugayet seeks compensation in the total amount of SAR 3,238,684 (USD 864,802) for loss of profits on the AOC contract and for the loss of profits incurred by its trading division. It also seeks SAR 255,207 (USD 68,146) for penalties assessed on the AOC contract.

(a) Contract with AOC

136. Al-Hugayet seeks compensation in the amount of SAR 362,684 for loss of profits on the contract with AOC. In the original claim Al-Hugayet stated the loss of profits as SAR 1,427,121. It subsequently reduced this amount after receipt of a payment of SAR 1,064,437.

137. Al-Hugayet stated the amount sought for loss of profits was the difference between the expected and actual profits for the period of 1 November 1990 to 31 December 1991.

138. The expected profit was calculated on the assumption that the contract would be fully staffed during this period and the manpower would have worked overtime for 10 per cent of the normal working hours. To evidence its loss Al-Hugayet provided an internally generated schedule of minimum expected sales and overhead margins for the contract and an internally generated schedule reflecting the actual sales and overhead margins accompanied by financial statements for 1989-1992.

(b) Trading division

139. Al-Hugayet seeks SAR 2,876,000 as loss of profits incurred by its trading division. Al-Hugayet stated that orders were put on hold by its clients, that shipments were either delayed or stopped by suppliers, and that representatives refused to come to Saudi Arabia for marketing and technical support. In response to the article 34 notification, Al-Hugayet stated that there was no particular party or contract to which it could attribute the loss of trading profit.

140. Al-Hugayet calculated its lost sales by deducting actual sales made from 1 June 1990 to 31 December 1991 from the estimated sales that Al-Hugayet believes it would have made had Iraq not invaded and occupied Kuwait. Al-Hugayet furnished an internally generated schedule containing the expected sale amounts for the third quarter of 1990 to the fourth quarter of 1991 and the corresponding actual sale amounts. No evidence is provided to support a rise in sales volume up to August 1990 and a decline thereafter. In fact, the sales figures submitted by Al-Hugayet reflect the reverse. The third and fourth quarters of 1990 were more profitable than the first half of that year.

(c) Penalties assessed on the AOC contract

141. Al-Hugayet seeks compensation in the amount of SAR 255,207 for penalties deducted by the AOC for man hours which were not provided by it from July to December 1991.

142. In its response to the article 34 notification, Al-Hugayet increased the claimed amount in respect of penalties by adding SAR 306,114 for the penalties assessed from January to June 1991. However, for the reasons set out in paragraphs 42 to 44 (amending claims after filing), the Panel does not consider Al-Hugayet's loss for the revised amount.

143. Al-Hugayet maintained it could not recruit and staff the contract to meet the start date of 1 November 1990 and these problems continued throughout 1991. Al-Hugayet stated that AOC deducted amounts as penalties for "unfilled position" throughout 1991 and that these penalties were a direct result of Iraq's invasion and occupation of Kuwait. The claimant submitted invoices dated from July to December of 1991 that indicated the itemised deductions. The invoice for the months of July, August and September included 13 coded entries in the following format "FM-PNLTY10".

The Panel assumes "PNLTY" means penalty, but is unable to interpret the codes before and after "PNLTY". The items deducted from the remaining invoices do not include "PNLTY". The claimant failed to provide any additional information or explanation of this loss item.

2. Analysis and valuation

144. The Panel finds that Al-Hugayet failed to establish the direct causal connection between its stated losses and Iraq's invasion and occupation of Kuwait. In addition, the Panel finds that Al-Hugayet did not provide sufficient evidence of its stated losses.

3. Recommendation for loss of profits

145. The Panel recommends no compensation for loss of profits or delay penalties.

B. Payment or relief to others

146. Al-Hugayet seeks compensation in the total amount of SAR 968,416 (USD 258,589) for losses on airfares for new recruits, airfares for recruitment personnel, recruitment costs, purchase of new vehicles, financial and interest losses, miscellaneous expenses, and evacuation costs.

(a) Airfares and recruitment costs

147. Al-Hugayet seeks compensation in the total amount of SAR 311,554 for airfares for new recruits, airfares for recruitment personnel and recruitment costs.

148. Al-Hugayet stated it incurred increased costs on the contract with AOC because the bid price for this contract was based on the assumption that most of the employees from the previous contract would roll over into the new contract. Therefore Al-Hugayet would have borne no additional costs for recruiting and travelling expenses for staffing this contract.

(b) Purchase of new vehicles

149. Al-Hugayet seeks compensation in the amount of SAR 197,000 for the purchase of new vehicles for use on the AOC contract.

150. Al-Hugayet stated that when Iraq invaded and occupied Kuwait, the duration of this situation or its consequences were unknown. Al-Hugayet determined it was more convenient to sell the vehicles used at the site after the evacuation of its employees. When work resumed Al-Hugayet stated it had to comply with the contract terms and was obliged to replace the vehicles it sold with new vehicles.

(c) Financial and interest losses

151. Al-Hugayet seeks compensation in the amount of SAR 240,977 for expenses incurred on financial and interest losses.

152. Al-Hugayet stated that due to the losses and expenses incurred as a result of Iraq's invasion and occupation of Kuwait, the bank overdraft facilities had to be increased to finance its contractual and trading obligations. The increased use of the overdraft was due "mainly" to the additional financial burden caused by the interruption of the AOC contract.

153. In response to the article 34 notification, Al-Hugayet increased the amount claimed to SAR 2,146,972 to cover non-payment over the five year life of the contract with AOC. For the reasons set out in paragraphs 42 to 44 (amending claims after filing), the Panel does not consider Al-Hugayet's claim for the revised amount.

(d) Miscellaneous expenses

154. Al-Hugayet seeks compensation in the total amount of SAR 101,331 for expenses of employees evacuated from Al-Khafji. The expenses included food allowance (SAR 56,741); accommodations in Al-Hasa (SAR 10,550); evacuation expenses (SAR 10,820); Iqama (visa) fees for new arrivals (SAR 14,420); and gas masks (SAR 8,800).

155. Al-Hugayet stated it continued performance on the contract up to 16 January 1990 just before the invasion of Al-Khafji by the Iraqi army. The claimant evacuated all employees from the Al-Khafji area and incurred expenses for room and board for personnel. On 17 January 1991, AOC declared a force majeure event under the contract, which was in effect until 27 April 1991.

156. The only employees relocated outside Saudi Arabia were those who chose to "leave the work totally" and return to their own country.

157. Al-Hugayet seeks compensation in the amount of SAR 117,554 for expenses incurred in evacuating its employees who left Saudi Arabia. Al-Hugayet stated that instead of using the return/excursion tickets, new one way tickets had to be purchased.

158. Al-Hugayet stated that the evacuation of sixty employees was effected upon the employees' request and was done during a difficult time where Al-Hugayet could not obtain any affidavits other than the invoices issued. The employees departed individually or in small groups over the course of 12 months, starting in January 1991.

2. Analysis and valuation

(a) Airfares and recruitment costs

159. Al-Hugayet provided invoices for air travel from November 1990 to October 1992, but did not provide names of new recruits, passport numbers, project assignments or proof of payment. Al-Hugayet did not submit contracts or demonstrate that such expenses were extraordinary and temporary costs caused solely by Iraq's invasion and occupation of Kuwait. The Panel finds that Al-Hugayet did not provide sufficient evidence of its stated losses.

(b) Purchase of new vehicles

160. In support of its loss, Al-Hugayet provided an agreement for the sale of three buses and 15 pick-up trucks for SAR 504,000 on 15 February 1991 and a cash invoice for the purchase of 15 white diesel Nissan 1991 pick up trucks on 23 May 1991 for SAR 566,000. Al-Hugayet also submitted correspondence between it and its employer that indicated that Al-Hugayet was required to purchase new vehicles because the existing vehicles were not in compliance with the requirements of the contract. Al-Hugayet did not allege that its vehicles were damaged or destroyed due to Iraq's invasion of Kuwait. The Panel finds that Al-Hugayet did not provide sufficient evidence that its losses were the direct result of Iraq's invasion and occupation of Kuwait.

(c) Financial and interest losses

161. To support its claim for increased overdraft charges, Al-Hugayet provided two letters from Riyadh Bank to Al-Hugayet dated 28 February 1991 and 10 May 1993, respectively. These letters were only partially translated into English. The limited translations do not permit the Panel to determine the nature of the increases or the amounts that may have been assessed. The Panel finds that Al-Hugayet did not provide sufficient evidence of its stated losses.

(d) Miscellaneous expenses

162. In support of the claim for food allowances, Al-Hugayet supplied lists entitled "food allowance advance" for February through May of 1991 which are signed and dated by the recipient. No list is provided of the AOC employees at the Al-Hasa site, and the number of employees paid food allowance advances does not match with the number of employees evacuated from the Al-Khafji site. Al-Hugayet did not submit any evidence that such expenses were extraordinary or temporary in nature. The Panel finds that Al-Hugayet did not provide sufficient evidence of its stated losses.

163. In support of losses due to employee accommodation in Al-Hasa, Al-Hugayet provided a receipt in the amount of SAR 1,600 for three rooms in

Al-Hasa from 18 January to 18 March 1991, a receipt in the amount of SAR 4,000 for advance payment for nine rooms in Al-Hasa dated 18 January 1991, a payment voucher in the amount of SAR 4,930 for Al-Hasa rent dated 8 July 1991, and a transfer draft application in the amount of SAR 1,600 dated 8 July 1991. Al-Hugayet did not provide a list of the employees housed in each accommodation or an explanation as to why accommodation would be needed after the project restart date of 27 April 1991. The Panel finds that Al-Hugayet failed to establish the causal connection between these losses and Iraq's invasion and occupation of Kuwait. In addition, the Panel finds that Al-Hugayet did not provide sufficient evidence of its stated losses for payments shown after January 1991.

164. The Panel recommends SAR 5,600 for accommodation expenses incurred in January 1991.

165. In support of the claim of evacuation expenses, Al-Hugayet furnished all receipts and an accompanying expense claim form of an employee dated 16 March 1991 noting that the expenses were incurred in evacuating AOC employees to Al-Hasa. The Panel recommends SAR 10,820 for the costs of evacuating the AOC employees.

166. In support of its claim for Iqama fees, Al-Hugayet furnished a petty cash voucher dated 29 June 1991. The Panel finds that Al-Hugayet failed to establish the causal connection between its stated losses and Iraq's invasion and occupation of Kuwait.

167. Al-Hugayet provided petty cash vouchers for the purchase of gas masks. The Panel recommends SAR 8,800 for the costs of gas masks.

168. In support of its evacuation costs claim Al-Hugayet provided a list of 60 personnel who allegedly left Saudi Arabia between 15 November 1990 and 28 December 1991, accompanied by the invoices from the travel agency and a copy of each ticket. Eight of the employees on this list were included on a statement of account as "vacationists". No evidence or information is provided to explain why this evacuation began in November 1990 and continued throughout the next year. The Panel finds that Al-Hugayet failed to establish the causal connection between its stated losses and Iraq's invasion and occupation of Kuwait.

3. Recommendation for payment or relief to others

169. The Panel recommends compensation in the total amount of SAR 25,220.

C. Summary of recommendation for Al-Hugayet

170. Based on the foregoing findings, the Panel recommends compensation in the amount of USD 6,734 (SAR 25,220).

IX. THE CLAIM OF ARABIAN LAMAH CO. LTD.

171. Arabian Lamah Co. Ltd. ("Arabian Lamah") is a Saudi Arabian limited liability company specialising in electrical and mechanical contracting works.

172. Arabian Lamah seeks compensation in the amount of SAR 19,178,072 (USD 5,120,981) for contract losses, interest to be calculated by the UNCC and claim preparation costs.

173. The claim preparation costs element is in the amount of SAR 30,000. Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

174. Arabian Lamah entered into a sub-contract with the main contractor, El Seif Engineering Contracting Establishment ("El Seif"). The sub-contract is dated 2 November 1988 and is for the execution of heating ventilation and air conditioning works on the third extension of the training centre at Wadi Al Dawasir. The employer was the Ministry of Defence and Aviation. The value of the sub-contract works is SAR 31,000,000. The sub-contract works were to be completed within a period of 518 days "i.e. April 1990".

175. Arabian Lamah sub-sub-contracted the project works to a Belgian company called Continental Air Conditioning International N.V. ("CACI"). Arabian Lamah stated that at the time Iraq invaded and occupied Kuwait the employees working at the project site indicated their intentions to leave. It further stated that on 29 August 1990 it informed El Seif that it would not be able to perform its sub-contract at the project site because of the depletion of the workforce.

176. Arabian Lamah asserted that El Seif treated the abandonment of the project works as a breach of the sub-contract agreement and on 26 November 1990 El Seif engaged the services of Abahsain Secem Ltd. to complete the project works. Thereafter, El Seif filed a claim against Arabian Lamah for the amount (SAR 19,148,072) that El Seif spent in getting the project works completed by Abahsain Secem Ltd.

177. The Panel notes that in the article 34 notification, Arabian Lamah was requested to identify the nature of proceedings instituted against it and the status of those proceedings. It was also requested to state the forum in which the proceedings were instituted and to provide a copy of the pleadings together with a copy of the award or judgement. In its response, Arabian Lamah stated that the "proceedings are on going according to the Labor laws of Saudi Arabia" and "please refer to the claim of El Seif Engineering Contracting Est. against Arabian Lamah Co. Ltd." The Panel notes that the claim to which Arabian Lamah referred is a demand letter dated 23 February 1993 from Al Seif demanding Arabian Lamah to pay SAR

19,148,072. The Panel finds that Arabian Lamah provided no other information or documentation related to the demand letter.

178. The Panel finds that Arabian Lamah did not submit sufficient evidence to substantiate its claim for contract losses. Arabian Lamah did not submit any evidence to support its assertion that El Seif filed a claim against it or that Arabian Lamah paid the alleged amount.

179. The Panel recommends no compensation for contract losses. Because the Panel recommends no compensation for the contract losses, the claim for interest is rejected.

X. THE CLAIM OF CHIYODA PETROSTAR LTD.

180. Chiyoda Petrostar Ltd., Saudi Arabia ("Chiyoda") is a mixed limited liability company registered in Jeddah, Saudi Arabia.

181. Chiyoda seeks compensation in the amount of USD 20,734,289 for contract losses incurred as a result of increased costs for goods, services and accommodation, interest and claim preparation costs.

182. The claim preparation costs element is in the amount of SAR 35,000 (USD 9,346). Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

183. In its response to the article 34 notification, Chiyoda sought to increase the claimed amount to USD 24,751,000. However, for the reasons set out in paragraphs 42 to 44 (amending claims after filing), the Panel does not consider Chiyoda's claim for the revised amount.

A. Facts and contentions

184. The contract loss arises from the execution of a contract for the construction of an ammonia plant and an urea plant for Saudi Arabian Fertilizer Company ("SAFCO"). On 23 July 1990 SAFCO awarded a letter of intent to Chiyoda Corporation, a related company in Japan, for the design, engineering and procurement services to be performed outside the Kingdom of Saudi Arabia and to Chiyoda for all remaining works and services under the scope of work inside Saudi Arabia. Chiyoda Corporation accepted the letter of intent for both companies on 26 July 1990. The "lump-sum turn-key" contract dated 16 October 1990 contained an obligation to complete mechanical completion on or before 23 December 1992.

185. Chiyoda divided its claim into two parts: (a) the extra costs incurred due to the difficulties of procurement and field construction and (b) the additional costs incurred to recover lost time.

186. With respect to procurement and field construction, Chiyoda stated that with the arrival of the Allied Coalition Forces in Saudi Arabia, the available construction materials were directed to the Allied Coalition Forces and all port facilities were unavailable for industrial purposes. Chiyoda also alleged that negotiations for sub-contracts and procurement were not possible in a timely manner until after the liberation of Kuwait. Chiyoda then incurred additional costs in order to accelerate the construction work and local fabrication work to complete the project on time.

187. The plants were completed on time. Chiyoda also submitted correspondence between it and SAFCO regarding Chiyoda's demand for reimbursement of increased costs. The correspondence file ends with

Chiyoda's settlement proposal to SAFCO. However, Chiyoda did not submit SAFCO's reply.

B. Analysis and valuation

188. For the losses caused by procurement and construction difficulties, Chiyoda submitted vendor statements that estimated equipment prices "before the war" and equipment prices "after the war", a document entitled "Justification of Price Escalation for Construction of SAFCO Ammonia/Urea Project" from the supplier of the labour force, a price list from the Royal Commission Camp, and an unsigned lease agreement for a camp in Jubail for the period July 1991 to July 1993. However, Chiyoda failed to submit evidence of the volume of freight transported or the rate paid to demonstrate the increases in transportation costs. Chiyoda also supplied an internally prepared chart entitled "Increase of CPL Work Force Mobilization". The chart lists the increased costs between the original plan and present plan for construction equipment, manpower, and CPL supervisory staff.

189. The chart is supported by accounting spread sheets demonstrating cost comparisons for each of the three areas.

190. The Panel finds that Chiyoda failed to establish that such losses were the direct result of Iraq's invasion and occupation of Kuwait. In addition, the Panel finds that Chiyoda submitted sufficient evidence of the increase in costs, but did not provide sufficient evidence that such costs were not paid by SAFCO. In this context, the Panel notes that the category "E" claim filed by SAFCO alleges that a settlement was reached and that Chiyoda was paid in full.

C. Summary of recommendation for Chiyoda

191. Based on the foregoing findings, the Panel recommends no compensation for contract losses. Because the Panel recommends no compensation for the contract losses, the claim for interest is rejected.

XI. THE CLAIM OF GUSTAV EPPLE ARABIA LIMITED

192. Gustav Epple Arabia Limited ("Epple") is a limited liability company registered in Riyadh, Saudi Arabia. Epple seeks compensation in the amount of SAR 14,941,960 (USD 3,989,842) for contract losses, claim preparation costs and interest on the losses with respect to three projects.

193. The first of the three contracts was with Hyundai Engineering & Construction Company Limited for the construction of villages and stations in Riyadh and Yanbu. The second contract was with King Faisal Foundation for the design and construction of a private school. The third contract was with the Ministry of Defence and Aviation of the Kingdom of Saudi Arabia for the construction of a desalination station and sewage station. The losses of each contract are as follows:

Table 5: Losses alleged by Epple

Alleged Loss	Hyundai	King Faisal Foundation	Ministry of Defence and Aviation	Total by Loss
Delay fines	--	--	SAR 1,129,353	SAR 1,129,353
Consultant fees	SAR 1,559,000	SAR 768,107		SAR 2,327,107
Supervision fees			SAR 600,000	SAR 600,000
Losses of low productivity	SAR 5,774,000	SAR 1,000,000	SAR 750,000	SAR 7,524,000
Increase in shipping and transport costs	SAR 75,000	SAR 20,000	--	SAR 95,000
Additional cost in wages and food	SAR 1,785,000	SAR 750,000	SAR 700,000	SAR 3,235,000
Total by Contract	SAR 9,193,000	SAR 2,538,107	SAR 3,179,353	SAR 14,910,460 (USD 3,981,431)

194. The claim preparation costs element is in the amount of SAR 31,500 (USD 8,411). Applying the approach taken with respect to claim preparation costs set out in paragraph 30, the Panel makes no recommendation for claim preparation costs.

195. With respect to the delay fines imposed by the Ministry of Defence and Aviation, Epple stated that the project stopped due to the lack of an alternative labour force and this resulted in the imposition of the delay penalties. Epple provided six applications for payment beginning in July 1992 which indicated deductions due to delay, but provided no further detail as to the reasons for the delay or the time period in which the delays occurred. In addition, with respect to Epple's alleged loss due to

delay penalties, the Panel finds that Epple failed to establish that such losses were directly caused by Iraq's invasion and occupation of Kuwait.

196. The Panel notes that Epple provided no explanation of its losses for consultant fees, supervision fees and increased shipping and transport costs. There is no indication as to how these losses were quantified, when they were incurred or whether payment was made. Epple supplied 24 invoices from six freight and transport companies dated between April and December 1990. There is however no indication of the projects to which the invoices relate and no explanation as to why or how the invoices constitute an increase in cost.

197. Epple stated that the loss of productivity and the additional cost in wage and food were a result of the departure of the foreign work force from Saudi Arabia. Epple asserted that this departure caused a slow down on the projects and an increase in the cost of remuneration of, and subsistence for, the remaining workforce. Epple furnished no further explanation of these losses, nor any documentation to substantiate the loss or method of calculation of such losses.

198. The Panel finds that Epple did not provide sufficient evidence of its contract losses.

199. Epple also seeks compensation for interest on the losses suffered. Because the Panel recommends no compensation for the contract losses, the claim for interest is rejected.

200. Based on the foregoing findings, the Panel recommends no compensation.

XII. THE CLAIM OF MOHAMMED A. AL-SWAILEM CO. LTD. FOR COMMERCE & CONT.

201. Mohammed A. Al-Swailem Co. Ltd. for Commerce & Cont. ("Al-Swailem") is a limited liability company engaged in construction of roads, bridges and airports.

202. On the original category "E" claim form Al-Swailem sought compensation for contract losses in the amount of SAR 7,043,413 (USD 1,880,751). However, the total alleged loss suffered according to a document entitled "Summary of Compensation Claim" is SAR 7,043,314. Accordingly, the total amount for contract losses should be SAR 7,043,314 (USD 1,880,725).

203. Al-Swailem, in its response to the article 15 notification increased the total claimed amount for contract losses to SAR 13,124,481. The claimant's legal representative, in its response (dated 27 June 1999) to the formal article 15 notification dated 3 May 1999 further increased the claimed amount to SAR 13,144,481 by including SAR 20,000 as claim preparation costs.

204. Applying the approach taken with respect to amending claims after filing set out in paragraphs 42 to 44, the Panel does not take into account the increases in the claimed amounts.

A. Facts and contentions

205. The Ministry of Communications of the Kingdom of Saudi Arabia entered into a contract dated 14 August 1988 with Al Siddais General Contracting Establishment for the maintenance of roads. The total value of the contract was SAR 15,433,379. Pursuant to a "Works Execution Contract" dated 3 January 1990, entered into between Al-Swailem and Al Siddais General Contracting Establishment, Al-Swailem assumed and took over complete responsibility for the execution of the project. Al-Swailem stated that work on the project commenced on 2 February 1990 and was suspended on 2 August 1990.

206. Al-Swailem seeks compensation in the amount of (a) SAR 986,214 for salaries paid; (b) SAR 5,041,900 for non-use of equipment; and (c) SAR 1,015,200 for re-construction of the damaged part of the works.

207. Al-Swailem stated that project works were suspended for a period of 397 days during which period it continued to pay salaries to its technical, administrative, and executive staff. Al-Swailem stated that the cost of moving its personnel within the Kingdom of Saudi Arabia was also included in this loss element.

208. Al-Swailem stated that it could neither use its equipment nor move it to another site and that the rent of the equipment had increased fourfold.

209. Al-Swailem seeks compensation for expenses incurred on repairing the damage caused to the completed portion of the works.

B. Analysis and valuation

210. The Panel finds that Al-Swailem provided sufficient evidence to establish the payment of salaries to its employees for the month of August 1990 in the amount of SAR 61,975. The Panel finds that Al-Swailem did not submit sufficient evidence to support the losses caused by the suspension of works, the maintenance of personnel or any details of the costs of moving personnel to safer locations for the remaining period of time. The Panel recommends compensation for salaries paid to its employees for the month of August 1990.

211. The Panel finds that Al-Swailem did not provide sufficient evidence to substantiate its claim for "non use of equipment". The Panel notes that Al-Swailem provided a copy of the statement of contractors' equipment on site, issued by the Ministry of Communications. The statement covers eleven types of equipment, and includes the number of each type of equipment on site and the alleged daily rental rate.

212. The Panel finds that Al-Swailem did not provide details of capacities, models, makes, age, condition of the equipment or copies of any lease agreements. The Panel finds that Al-Swailem did not provide sufficient evidence to support the daily rates used in its calculation nor any evidence of payment of those rates. The Panel is unable to make any recommendation for compensation for "non use of equipment".

213. The Panel finds that Al-Swailem did not provide sufficient evidence to substantiate its claim for "re-construction of the damaged part of the works". The Panel notes that Al-Swailem did not provide evidence of the extent of damage or actual cost of the remedial work. The existence of extra works, a change in the design and scope of the project, and the construction of additional roads make the identification of compensable costs, if any, impossible. Therefore, the Panel recommends no compensation.

C. Summary of recommendations for Al-Swailem

214. Based on the foregoing findings, the Panel recommends compensation in the amount of USD 16,549 (SAR 61,975) for contract losses. The Panel finds the date of loss to be 2 August 1990.

XIII. THE CLAIM OF NESMA & AL FADL CONTRACTING CO. LTD.

215. Nesma & Al Fadl Contracting Co. Ltd. ("Nesma") is a Saudi Arabian limited liability company engaged in construction business. The original category "E" claim form dated 12 December 1993 states the name of Nesma as "Nesma and Fadl Contracting Co. Ltd.".

216. In its original claim, Nesma sought compensation in the amount of SAR 16,800 for the purchase of gas masks. In the substituted claim form submitted by the claimant's legal representative, Nesma sought compensation in the amount of SAR 82,505. This increased figure included SAR 10,000 as claim preparation costs charged by the claimant's legal representative. In its article 34 response dated 25 July 1999, Nesma stated that the correct amount spent on purchasing the gas masks was SAR 16,800 and not SAR 72,505. Nesma also withdrew its request for claim preparation costs.

217. Nesma seeks compensation in the amount of SAR 16,800 (USD 4,486) for payment or relief provided to others and interest to be determined "by the UNCC".

218. For the reasons stated in paragraph 28, the Panel does not address the issue of compensability of claims for interest.

219. Nesma stated that gas masks were purchased in Saudi Arabia on 5 February 1991, "a time during which the Allied air campaign against Iraq was ongoing and during which Saddam Hussain was launching SCUD missiles against civilian targets..."

220. The Panel finds that Nesma provided sufficient evidence to substantiate its claim for expenses incurred. Nesma provided a copy of an invoice dated 5 February 1991 from Star International Company Limited for gas masks with built-in filters. Nesma also provided a copy of a cheque dated 2 February 1991 issued in favour of Star International Company Limited for SAR 16,800 along with a copy of a document entitled "Bank Payment Voucher". It also provided a copy of a journal voucher which contains the debit entry for SAR 16,800.

221. The Panel recommends compensation in the amount of USD 4,486 (SAR 16,800) for payment or relief to others. The Panel finds the date of loss to be 5 February 1991.

XIV. THE CLAIM OF SAUDI ARABIAN SAIPEM LIMITED

222. Saudi Arabian Saipem Limited ("Saudi Saipem") is a Saudi Arabian limited liability company engaged in the business of onshore and offshore construction works related to petroleum, gas and petrochemicals.

223. Saudi Saipem seeks compensation in the amount of SAR 403,904 (USD 107,852) and USD 3,833,955 for contract losses, interest on contract losses, financial losses and payment or relief to others. Saudi Saipem seeks compensation in the total amount of USD 3,941,807.

A. Contract losses

1. Facts and contentions

224. Saudi Saipem seeks compensation in the amount of USD 3,250,000 for unpaid retention money. It also seeks compensation in the amount of USD 356,850 for interest on unpaid retention money.

225. Saudi Saipem entered into a contract with the State Organization for Oil Projects ("SCOP") for the completion of the Iraq Crude Oil Pipeline Trans Saudi Arabia Project. Saudi Saipem stated that the project was commissioned in 1987 and the final amounts due to it were only payable after it had furnished to SCOP evidence of due settlement of its tax liability for the year 1987. It further stated that because the tax authorities in Saudi Arabia delayed processing its tax returns for the year 1987, it could only forward the relevant documents to SCOP on 27 November 1990. It further stated that SCOP has not paid the retention money due to Saudi Saipem, despite several reminders.

2. Analysis and valuation

226. The Panel finds that Saudi Saipem had a contract with Iraq for the purposes of the "arising prior to" analysis (see paragraphs 16 and 17 supra).

227. Because the project works were commissioned in 1987, the performance that created the debt in question occurred prior to 2 May 1990. In the article 34 notification, Saudi Saipem was requested to provide a copy of the contract entered into with SCOP. The Panel notes that Saudi Saipem did not respond to the article 34 notification. The Panel finds that the alleged loss for unpaid retention money is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

228. The Panel finds also that the interest on unpaid retention money is outside the jurisdiction of the Commission and, therefore, not compensable.

3. Recommendation for contract losses

229. The Panel recommends no compensation for contract losses.

B. Financial losses

1. Facts and contentions

230. Saudi Saipem seeks compensation in the amount of USD 227,105 for expenses incurred on mobilising new recruits. Saudi Saipem alleged it repatriated its overseas employees during the second quarter of 1990 and this adversely affected its commercial operations for the year 1990 and during the first half of 1991. It also stated that in order to rebuild its workforce in 1991, Saudi Saipem spent additional amounts in recruiting expatriate personnel, including airfares and recruitment agency fees.

2. Analysis and valuation

231. The Panel finds that Saudi Saipem failed to establish that the loss suffered was directly related to Iraq's invasion and occupation of Kuwait and it also did not provide sufficient evidence to substantiate its loss of "mobilization and connected costs".

232. With respect to its recruitment costs, Saudi Saipem provided copies of invoices from Al-Karim Manpower Corporation Limited, Bangkok, Thailand. These invoices were issued between 30 July 1990 and 21 March 1992. The Panel notes that the invoice issued in July 1990 was for an amount of USD 3,500; four invoices issued in the months of June and July 1991 were for a total amount of USD 98,370; and one invoice issued in March 1992 was for an amount of USD 125,235. These invoices have been stamped as paid.

233. The Panel finds that Saudi Saipem did not submit sufficient evidence to establish that the recruitment expenses incurred were the direct result of Iraq's invasion and occupation of Kuwait. Specifically, Saudi Saipem did not identify the projects for which it was recruiting or how the workforce for these projects was affected by Iraq's invasion and occupation of Kuwait.

3. Recommendation for financial losses

234. The Panel recommends no compensation for financial losses.

C. Payment or relief to others

235. Saudi Saipem seeks compensation in the amount of SAR 403,904 (USD 107,852) for expenses incurred in repatriating 161 employees. Saudi Saipem stated that it repatriated its overseas employees due to the "war operations in the neighborhood of Dhahran".

236. In support of its claim, Saudi Saipem provided a list of 161 employees with their nationality and the cost of airfares and the corresponding invoices from travel agencies. The invoices provided full flight information including the date of the flight, the date of the ticket purchase and the cost of the flight. The invoices have a stamp verifying that the project was charged for the costs and they have been stamped as paid.

237. The Panel finds that Saudi Saipem provided sufficient evidence to substantiate a claim for evacuation costs and that the loss is compensable to the extent that the costs are "temporary and extraordinary expenses". Accordingly, the Panel recommends compensation for the difference between the normal costs of mobilisation and the costs incurred during this repatriation.

238. The Panel recommends SAR 96,000 for compensation for payment or relief to others.

D. Summary of recommendations for Saudi Saipem

239. Based on the foregoing findings, the Panel recommends compensation in the amount of USD 25,634 (SAR 96,000).

XV. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

240. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

Table 6: Recommended compensation for the eleventh instalment

Claimant	Claim Amount USD	Recommended Amount USD
Abahsain Secem Limited for Electrical Works	1,945,268	nil
Abu Al-Enain & Jastaniah Co., Ltd.	3,679,049	nil
Al-Ghurery Company for Trading & Contracting	5,060,308	nil
Al Harbi Trading & Contracting Co. Ltd	1,722,883	nil
Al-Hugayet Trading & Contracting Est.	1,198,880	6,734
Ali Awad Al-Qahtani & Bros. Co.	218,034	nil
Alissa Chemaco Co. Ltd.	1,564,187	nil
Al Taif Company for Operation-Maintenance and Contracting Limited	3,636,614	nil
Arabian Lamah Co. Ltd.	5,120,981	nil
Awrad United Trading Co. Ltd.	614,361	nil
Chiyoda Petrostar Ltd.	20,734,289	nil
Gustav Epple Arabia Limited	3,989,842	nil
Metito Arabia Industries Limited	425,610	nil
Mohammed A. Al-Swailem Co. Ltd for Commerce & Cont.	1,880,725	16,549
Nesma & Al Fadl Contracting Co. Ltd.	4,486	4,486
Saudi Amoudi Group Co., Ltd.	630,848	nil
Saudi Arabian Saipem Limited	3,941,807	25,634
Saudi Letco. Co., Ltd.	654,205	nil

Claimant	Claim Amount USD	Recommended Amount USD
Trans Middle East Co. for Trading & Contracting	465,878	nil

Geneva, 7 December 1999

(Signed) Mr. Pierre Genton
Commissioner

(Signed) Mr. Vinayak Pradhan
Commissioner

(Signed) Mr. John Tackaberry
Chairman